



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/728,086 Confirmation No. 7301
Applicant : Kevin Neil Kirn, et al.
Filed : December 5, 2003
Group Art Unit: 2672
Examiner : Not yet assigned
Docket No. : MFCP.108796
Customer No. : 45809

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF MARK A. NIKIEL
PURSUANT TO 37 C.F.R § 1.131**

Dear Sir:

I, Mark A. Nikiel, declare as follows:

1. I am an inventor of the above-referenced patent application, and am familiar with the contents thereof.
2. I currently reside at 16520 NE 132 Street, Redmond, WA 98052.
3. I have reviewed the Biggs et al patent application publication US 2004/0172451 cited by the Examiner under 35 U.S.C. §103(a) which has a publication date less than one year prior to the effective U.S. filing date of this application.
4. The attached documents show that this invention was conceived in the United States prior to February 27, 2003 (or in a NAFTA country after 12/8/93, or in a WTO country after 1/1/96).

Exhibit A is provided to show that the date of conception of the invention was prior to February 27, 2003. The various sections within Exhibit A explain an idea of sending and publishing digital photos in the form of electronic mail over the Internet. For example, the "Send and Publish" section details the ability to save space within a user's email by uploading the digital photos to a server and sending links to the photos instead of the photos themselves. Another example is the "Photo Editing" section which details how a user can edit and store the digital photos before the user sends a message.

Exhibits B-D are provided to show that I worked continuously from the time I conceived the invention prior to February 27, 2003 up to the date I reduced the invention to practice.

Exhibit B is an email dated February 17, 2003. The email shows an inventor contemplating on how to devise a method for how to add alerts for when a user receives a PhotoMail message.

Exhibit C is an email dated February 28, 2003. The email shows an inventor encouraging a group of people to continue working on the visual designs of the invention. As shown in the subject header of the email, the email is related to the PhotoMail designs.

Exhibit D is an email dated March 21, 2003. The email shows that the invention was reduced to practice no later than March 28, 2003. Exhibit D is an email that contains instructions on how to use PhotoMail with a testing tool.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

4/1/05
Date

Mark A. Nikiel

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